Exhibit C

##: Circumstantial Evidence

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case.

Authority: 1A Kevin F. O'Malley et al. *Federal Practice and Instructions*, § 101.11 (2001 5th ed.)

Lawson's Position: It is Lawson's position that the above instruction pertaining to circumstantial evidence generally should replace ePlus's Proposed Instruction P-16 and be read as part of the Court's preliminary jury instructions. Circumstantial evidence, of course, may be used to prove any fact at issue in the case. If the jury is read only a specific instruction on circumstantial evidence pertaining only to the issue of proving direct infringement of a third party, the jury is likely to be misled that the standard of proof is lower on that issue. A proper understanding by the jury requires the proposed general instruction on circumstantial evidence.